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Nos. 68 and 69

In the Supreme Court of the United States

OCTOBER TERM, 1944

THE CITY OF CLEVELAND, APPELLANT

v.

THE UNITED STATES OF AMERICA AND FEDERAL PUBLIC HOUSING AUTHORITY

JOHN J. BOYLE, COUNTY TREASURER OF CUYAHOGA COUNTY, JOHN A. ZANGERLE, COUNTY AUDITOR OF CUYAHOGA COUNTY, BOARD OF COUNTY COMMISSIONERS OF CUYAHOGA COUNTY, OHIO, APPELLANTS

v.

THE UNITED STATES OF AMERICA AND FEDERAL PUBLIC HOUSING AUTHORITY

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO

BRIEF FOR APPELLEES

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No. 69

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BRIEF FOR APPELLEES

OPINION BELOW

The opinion of the court below (R. 15–21) is reported in 52 F. Supp. 906.

JURISDICTION

The judgment appealed from was entered November 19, 1943 (R. 24–26). The petitions for appeal were filed February 9, 1944. The jurisdiction of the three-judge district court was invoked by the United States under section 266 of the Judicial Code as amended, 28 U. S. C., sec. 380. The jurisdiction of this Court is invoked by the appellants under the same section.

QUESTIONS PRESENTED

1. Whether the present controversy is one cognizable under Section 266 of the Judicial Code.

2. Whether property acquired and used by the United States and its instrumentalities for low-cost housing purposes is immune from state taxation.

STATUTES INVOLVED

The statutes pertinent to the merits of the case are set forth in the brief for the appellant in No. 388, *Federal Public Housing Authority* v. *Guckenberger*. Section 266 of the Judicial Code, 28 U. S. C. sec. 380, and the Ohio statutory provisions which are pertinent on the jurisdictional question are set forth in the Appendix, *infra*, pp. 19–33.

STATEMENT

Sections 202 and 203 of Title II of the National Industrial Recovery Act of June 16, 1933, 48 Stat. 201, 40 U. S. C. secs. 402, 403—"with a view

to increasing employment quickly"—authorized the Federal Emergency Administrator of Public Works to expend moneys for the construction of low-cost housing and slum clearance projects. The Act further authorized the acquisition of the necessary lands by purchase or condemnation. Pursuant to these provisions, the United States in 1934 and 1935 condemned certain lands in Cuyahoga County, Ohio, for the establishment of three low-cost housing projects—the Cedar Central Project, the Outhwaite Project, and the Lake View Terrace Project (R. 2–3, 12, 14, 22). Thereafter the United States constructed on the land so acquired buildings and structures needed in connection with these low-cost housing projects (R. 4, 8, 12, 14, 22).

In 1937 Congress established the United States Housing Authority,[1] a wholly owned Government corporation, and authorized the President to transfer to the newly created corporation any housing or slum clearance projects of existing federal agencies along with funds and personnel connected therewith. United States Housing Act of September 1, 1937, 50 Stat. 888, 42 U. S. C. secs. 1401, 1404 (d). The Act further provided that property of the corporation should "be exempt from all taxation now or hereafter imposed

[1] By Executive Order No. 9070, dated February 24, 1942, the name of the United States Housing Authority was changed to the Federal Public Housing Authority. 7 Fed. Reg. 1529, 1530.

by the United States or by any State, county, municipality, or local taxing authority." 42 U. S. C. sec. 1405 (e). The Authority was empowered, however, to enter into agreements to pay sums "in lieu of taxes." 42 U. S. C. sec. 1413 (c). Pursuant to that Act the President issued Executive Order No. 7732, dated October 27, 1937, transferring to the United States Housing Authority all of the activities, rights, title and interests held by the Federal Emergency Administrator of Public Works in any housing or slum clearance projects constructed or in the process of construction on September 1, 1937, including the aforementioned projects in Cuyahoga County. Federal Register (1937), pt. 2, p. 2324 (R. 4, 22). Prior to 1940 the project was administered by the United States Housing Authority (R. 22, 14). On January 1, 1940, the property was leased for active management purposes to the Cleveland Metropolitan Housing Authority, a state housing agency organized under the State Housing Authority Law of Ohio (R. 4, 8, 22). Ohio General Code, secs. 1078–29ff. The lease limits the use of the premises to the purpose of providing low rent housing accommodations to families of low income and provides for rentals commensurate with the achievement of that purpose (R. 22, 14).

The taxing officials of the County of Cuyahoga and the City of Cleveland have assessed taxes totalling $1,558,814.83 against these properties in

the name of the United States for the years 1935 to 1943, inclusive (R. 22–23, 14, 4–5). "The defendant, County Treasurer, intends to enforce the collection of the delinquent taxes appearing on the tax duplicate against the property by suit to foreclose the claimed tax liens. The defendant, County Auditor, intends to continue to assess and the defendants, City of Cleveland and Board of County Commissioners, intend to continue to levy real property taxes against the property in the future" (R. 14–15). These levies and assessments were made pursuant to the interpretation placed by these taxing officials on sections 5328 and 5625-3 of the Ohio General Code as applicable to the property in question. These sections provide that "all real property in this state shall be subject to taxation, except only such as may be expressly exempted thereform", and that "the taxing authority of each subdivision is hereby authorized to levy taxes annually * * * on the real and personal property within the subdivision."[2] The taxing officials had accepted payments tendered by the United States and the Cleveland Metropolitan Housing Authority "in lieu of taxes" for the years 1937 through 1942 (R. 14, 23). In 1943 the County rescinded its part in these agreements (*ibid.*)

This proceeding was accordingly brought by the United States and the Federal Public Hous-

[2] This construction of the Ohio law as applicable to federal housing projects was confirmed by the subsequent opinion of the Ohio Supreme Court in the *Guckenberger* case, No. 388.

ing Authority to enjoin the County Treasurer of Cuyahoga County, the County Auditor of Cuyahoga County, the Board of County Commissioners of Cuyahoga County, and the City of Cleveland from collecting the taxes thus assessed (through sale or otherwise), to prevent future assessments, and to invalidate past assessments on the ground that the laws of Ohio, interpreted as applicable to the property of the United States, contravened the Constitution of the United States. (R. 1–6). Plaintiffs requested that a three-judge court be convened and that a temporary injunction issue in accordance with the provisions of Section 266 of the Judicial Code, 28 U. S. C. § 380 (R. 6, 7).

In due course the matter came on for hearing before a statutory three-judge court, the material facts set forth above having been either admitted in the answers (R. 7–11, 11–13) or in the stipulation as to certain facts filed by the parties (R. 14–15). The court entered findings of fact (R. 22–23) and granted the United States the relief requested (R. 25–26). All three judges agreed that the controversy was one cognizable under Section 266 of the Judicial Code (R. 15), but one judge dissented on the ground that the lands were not acquired and held for a governmental function (R. 20–21).

The defendants have appealed to this Court. On May 22, 1944, this Court entered the following order (R. 38):

* * * further consideration of the question of jurisdiction of this Court is postponed to the hearing of the cases on the merits.

Counsel are requested to discuss in their briefs and on oral argument the questions (1) whether sec. 266 of the Judicial Code is properly applicable to these cases so as to give this Court jurisdiction of the appeals (compare, e. g., *Ex parte Public National Bank*, 278 U. S. 101, and *Rorick* v. *Commissioners*, 307 U. S. 208, with *Spielman Motor Sales Co.* v. *Dodge*, 295 U. S. 89); and (2) whether the land in controversy would be taxable even if the Federal Housing Act of 1937 were unconstitutional.

SUMMARY OF ARGUMENT

The case presents the same question as is considered in the brief for the Federal Public Housing Authority in No. 388, namely, whether land owned by the United States and used for low-rent housing purposes is taxable by the state. The only difference is that here the land was obtained by condemnation instead of purchase. But inasmuch as the title of the United States is conceded, the method of obtaining it is immaterial.

The present case comes within Section 266 of the Judicial Code. The state law involved is state-wide in effect, being a general taxing stat-

ute. The officials involved, though locally chosen, were acting as officers of the state since they were subject to the direction of state officials, were collecting taxes for the benefit and use of the state as well as of the localities, and were enforcing a policy of state-wide concern.

ARGUMENT

On the merits this case involves precisely the same question as No. 388, *Federal Public Housing Authority* v. *Guckenberger*, whether a state may tax land owned by the United States used for slum clearance and low-rent housing purposes. The Court is respectfully referred to the Government's brief in No. 388 for a discussion of that problem.

The only difference between the cases is that in No. 388 the United States acquired the land by purchase, whereas here the land was obtained by condemnation. This is immaterial, inasmuch as the title to the land in either instance is concededly in the United States (R. 14). As in No. 388, the taxes were assessed against the property in the name of "The United States of America" (*ibid.*).

The title obtained by condemnation is valid even if it be assumed for purposes of argument that the Housing Act and its predecessor are unconstitutional, or that the latter could not validly have vested the United States with power to con-

demn for general welfare purposes.[3] An unconsitutional statute is not a nullity. For the reasons pointed out in our brief in No. 388, pp. 52–56, titles obtained even pursuant to unconstitutional statutory authority cannot be treated as void.

In addition to the reasons urged in that brief, it is significant that a condemnation award is a judgment, and that a judgment even under an unconstitutional law is binding. *Chicot County Drainage Dist.* v. *Baxter State Bank*, 308 U. S. 371. Any contention here based on the alleged validity of the underlying statute would be a collateral attack on the adjudication of the condemnation court. 1 Freeman on Judgments (5th ed., 1925), pp. 607–608. The validity of such a judgment is not subject to collateral attack unless the judgment is void, as it might be if the court which entered it had no jurisdiction over the subject matter. But the court would not have lacked such jurisdiction even though the statute authorizing the condemnation were invalid. *Chicot County* case, *supra*; *United States* v. *Nudelman*, 104 F. (2d) 549, 551–552 (C. C. A. 7), certiorari denied, 308 U. S. 589. In the lat-

[3] The brief for the Government in *State of Oklahoma* v. *Guy F. Atkinson Co. et al.*, October Term, 1940, No. 872, pp. 60–69, contains a discussion of the right of the United States to condemn when acting under the general welfare clause. This Court did not find it necessary to pass upon the question. 313 U. S. 508.

ter case the Circuit Court of Appeals said (p. 552):

> Defendant confuses jurisdiction of the court with authority of the United States to acquire the land in question for the declared purpose. By act of Congress the United States District Courts of the district wherein real estate is located, which is the subject of proposed condemnation proceedings, have jurisdiction of proceedings for such condemnation. * * * Obviously, the owner of any land or interest therein, which the United States is seeking to acquire by condemnation, has a good defense if the congressional authorization for the taking for the declared use is invalid. But the existence of such defense does not go to the jurisdiction of the District Court in which the proceeding is pending. Such defense must be pleaded timely the same as any other defense. The jurisdiction of the District Court in the instant suit over the condemnation proceedings is not conferred by the act which authorizes the agency to provide for low-cost housing and slum-clearance projects. Invalidity of the latter act would vitiate the authority of the designated governmental agency to institute and prosecute proceedings for condemnation of the land for the declared purposes; but such invalidity could not destroy the jurisdiction of the District Court to entertain and adjudicate the condemnation proceedings.

Furthermore, an examination of the condemnation proceedings by which the present lands were acquired in 1934 and 1935 show that the city, county and state were named as parties defendant.[4] They had an opportunity to raise the constitutional issues at that time. Their failure to interpose any objections to the taking renders the issue of the Government's right to condemn *res judicata* as to them.[5]

We do not suggest that appellants are attacking the Government's title in this proceeding. On the contrary, the assessment against the United States assumes that the Government has the title. It is thus plainly of no consequence here how title was obtained.

If, as seems plain, the title to the property was in the United States, the state may not tax the property. See the Government's brief in No. 388.

THE QUESTION OF JURISDICTION UNDER SECTION 266 OF THE JUDICIAL CODE.

Section 266 of the Judicial Code, 28 U. S. C. § 380, so far as pertinent, provides that "No interlocutory injunction suspending or restraining the enforcement, operation, or execution of any statute of a State by restraining the action of any officer of such State in the enforcement or execu-

[4] The cases are cited at R. 3. The county was made a party in all 8 proceedings, the city in 5, and the state in 3.

[5] A judgment binding on the city, county or state would be binding on their officers. *Sunshine Anthracite Coal Co.* v. *Adkins*, 310 U. S. 381, 403.

tion of such statute" shall be issued except by a court of three judges. This Court has requested that the parties discuss the application of Section 266, and the decisions cited in the Court's order indicate that the issues to be considered are (1) whether these cases involve a "statute of a State" within the meaning of the Section, and (2) whether the action sought to be restrained is that of "any officer of such State." All the other requisites of Section 266 would seem unquestionably to be present.

(1) It has frequently been held that Section 266 does not apply to local ordinances (*Ex Parte Collins*, 277 U. S. 565; *Ex Parte Public National Bank*, 278 U. S. 101), and *Rorick* v. *Board of Commissioners*, 307 U. S. 208, holds that it does not reach a state statute of purely local application. The present cases, however, involve a state law which is state-wide in scope and application.

Section 5328 of the Ohio General Code provides that:

> All real property in this state shall be subject to taxation except only such as may be expressly exempted therefrom. * * *

Section 5351 declares that:

> Real or personal property belonging exclusively to the state or United States, and public property used for a public purpose shall be exempt from taxation.

In the *Guckenberger* case (No. 388), from Cincinnati, the Ohio Supreme Court construed this

exemption as not reaching property belonging to the United States and used for low-rent housing purposes, thereby rendering the property taxable under Section 5328. Section 5570–1 requires the county auditor to list all exempt property, and empowers the Board of Tax Appeals of the State alone to revise the list; the auditor is required to follow the orders of the Board.

This statutory scheme is clearly state-wide. It applies to the entire state and is administered by a single State agency. The fact that cases are now pending in this Court both from Cuyahoga County and Hamilton County under the same state statute is an indication that the Ohio law involved is not of mere local application.

(2) *Ex Parte Collins*, 277 U. S. 565, and *Ex Parte Public National Bank*, 278 U. S. 101, hold that even a State law of general application may not be assailed under Section 266 if the proceeding is against a local official acting in behalf of his locality and not as an officer of the State. In the *Public Bank* case, this principle was applied to a proceeding against city tax collectors "having no state functions to perform, but charged only with the duty of collecting and receiving taxes assessed by other city officials in no respect for the use of the state but for and in behalf of the city alone" (278 U. S., at 104).

In *Spielman Motor Co.* v. *Dodge*, 295 U. S. 89, however, this Court held that the above authorities did not preclude a suit under Section 266

against a locally elected district attorney, inasmuch as his duty was to enforce state laws in the interest of the state and not merely of the locality. And in *Rorick* v. *Board of Commissioners*, 307 U. S. 208, 212, the Court stated that:

> An official though localized by his geographic activities and the mode of his selection may, when he enforces a statute which "embodies a policy of statewide concern", be performing a state function within the meaning of § 266.

We think that the county auditor and the county treasurer were not acting merely in a local capacity in attempting to collect the taxes involved in this case. In the first place, as already noted, insofar as the granting or denial of exemptions is concerned, the Ohio law (Ohio General Code, Sec. 5570–1) expressly declares that "the county auditor shall follow the orders of the board of tax appeals." Only the Board has statutory power to exempt property from taxation (*ibid.*).[6] Furmore, Section 5579 provides that—

> In addition to all other powers and duties vested in or imposed upon it by law, the tax commission of Ohio [now the board of tax appeals][7] shall direct and supervise

[6] The Ohio Supreme Court has so held in *State ex rel. Bartlett* v. *Thatcher*, 138 Ohio St. 235, 34 N. E. 2d 440 (1941); *State ex rel. Methodist Book Concern* v. *Guckenberger*, 133 Ohio St. 373, 14 N. E. 2d 9 (1938).

[7] The Tax Commission has since been replaced by the Board of Tax Appeals and the Tax Commissioner (Ohio General Code, Sec. 1464, quoted in appellant's brief in No. 388, p. 63).

> the assessment for taxation of all real property in the state. County auditors shall, under the direction and supervision of the tax commission of Ohio, be the chief assessing officers of their respective counties, and, shall list and value real property for taxation, within and for their respective counties, except as may be otherwise provided by law. * * *

Inasmuch as the Board is a state agency, to the extent that the auditor is subject to its directions, he is acting as an officer of the state.

Under Ohio law it also appears that the county treasurer acts on behalf of the state in collecting taxes. Upon failure to pay taxes, *the state* shall have the right to institute foreclosure proceedings (Section 5713), which shall be brought by the prosecuting attorney of the county "in the name of the county treasurer" to foreclose the lien of the state (Section 5718–3). Delinquent land not sold on foreclosure shall be forfeited to the state (Section 5744). The entry of land on the tax lists as delinquent is to be notice "of the prior right and lien of the state" (Section 5714). With respect to lands charged as forfeited or certified as delinquent, "it shall not be necessary to make the state a party, but it shall be deemed a party through, and represented by the county treasurer" (Sections 2670, 5719). The Ohio Supreme Court has held a suit for taxes by the county treasurer to be an action on behalf of the State; in *Wasteney*

v. *Schott*, 58 Ohio St. 410, 51 N. E. 34 (1898), that court said (pp. 415–416):

> * * * the courts will take notice that general taxes levied by the state directly, or through local agencies to which it has delegated that power, constitute a source of revenue for use in the due performance of the functions of the state government. Whether voluntarily paid, or collected by suit, they go partly to the general funds of the state for its disbursement in the administration of public affairs, and are in part disbursed in the due course of local administration by officers exercising the delegated powers of the state, deemed necessary and proper for that purpose. In the latter case, as well as the former, the fund belongs to the state's revenues, and the disbursement is for the public benefit, although local advantages may also result. Through county, township, municipal, and other organizations, they are paid out in the administration of public justice, the maintenance of the public order and security, the support of the public schools, and other purposes of a public nature pertaining to the state government. Hence, for all such taxes levied on real property the lien thereon provided by statute is declared to be in favor of the state; * * *

In the second place, the taxes collected by these officials are not "for the sole use of the city" (278 U. S. at 102), as they were in the *Public Bank* case. Section 5625–3 of the Ohio General

Code provides that the proceeds of taxes levied "by or for any subdivision when received by the fiscal officer thereof shall be deposited in its treasury to the credit of the appropriate fund." Under Section 2688, the county treasurer is required "to pay into the state treasury, on the warrant of the State auditor, the full amount of all sums found by the auditor of state, on an examination of the duplicate settlement sheets sent to him by the county auditor, to belong to the state." For example, a portion of the taxes are payable to the state public audit expense fund (sections 274, 287), and to the state public insurance fund (sections 1465–66).[8] With respect to funds paid in redemption of forfeited land, the county auditor is to specify "the proportion of such money belonging to the state * * * and the county treasurer shall pay into the state treasury the states' proportion of such money, at the time he pays the other taxes due the state" (Section 5747). Thus a part of the taxes in question are actually levied and collected for the use and benefit of the state, which distinguishes the present controversy from the *Public Bank* case.

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[8] The budgets of the County of Cuyahoga and the City of Cleveland for the year 1943 show appropriations made by these taxing units to pay their obligations to the State of Ohio. See County of Cuyahoga, Budget and Appropriation Report for 1943, p. 48; The City Record (official publication of the City of Cleveland) Supp., Feb. 10, 1943, p. 8.

Inasmuch as the county auditor and county treasurer are subordinate officials of the state department of taxation, acting for the benefit of the state and not merely for the local community, in the enforcement of a state law embodying "a policy of statewide concern", we believe that they are officers of the state within the meaning of Section 266.

CONCLUSION

It is respectfully submitted that the judgment of the court below should be affirmed.

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APPENDIX A

SECTION 266, JUDICIAL CODE

Section 266 of the Judicial Code as amended, 28 U. S. C. sec. 380 provides:

> SAME: ALLEGED UNCONSTITUTIONALITY OF STATE STATUTES; APPEAL TO SUPREME COURT
>
> No interlocutory injunction suspending or restraining the enforcement, operation, or execution of any statute of a State by restraining the action of any officer of such State in the enforcement or execution of such statute, or in the enforcement or execution of an order made by an administrative board or commission acting under and pursuant to the statutes of such State, shall be issued or granted by any justice of the Supreme Court, or by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, upon the ground of the unconstitutionality of such statute, unless the application for the same shall be presented to a justice of the Supreme Court of the United States, or to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a justice of the Supreme Court or a circuit judge, and the other two may be either circuit or district judges, and unless a ma-

jority of said three judges shall concur in granting such application. Whenever such application as aforesaid is presented to a justice of the Supreme Court, or to a judge, he shall immediately call to his assistance to hear and determine the application two other judges: *Provided, however*, That one of such three judges shall be a justice of the Supreme Court or a circuit judge. Said application shall not be heard or determined before at least five days' notice of the hearing has been given to the governor and to the attorney general of the State, and to such other persons as may be defendants in the suit: *Provided*, That if of opinion that irreparable loss or damage would result to the complainant unless a temporary restraining order is granted, any justice of the Supreme Court, or any circuit or district judge, may grant such temporary restraining order at any time before such hearing and determination of the application for an interlocutory injunction, but such temporary restraining order shall remain in force only until the hearing and determination of the application for an interlocutory injunction upon notice as aforesaid. The hearing upon such application for an interlocutory injunction shall be given precedence and shall be in every way expedited and be assigned for a hearing at the earliest practicable day after the expiration of the notice hereinbefore provided for. An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction in such case. It is further provided that if before the final hearing of such application a suit shall have been

brought in a court of the State having jurisdiction thereof under the laws of such State, to enforce such statute or order, accompanied by a stay in such State court of proceedings under such statute or order pending the determination of such suit by such State court, all proceedings in any court of the United States to restrain the execution of such statute or order shall be stayed pending the final determination of such suit in the courts of the State. Such stay may be vacated upon proof made after hearing, and notice of ten days served upon the attorney general of the State, that the suit in the State courts is not being prosecuted with diligence and good faith. The requirement respecting the presence of three judges shall also apply to the final hearing in such suit in the district court; and a direct appeal to the Supreme Court may be taken from a final decree granting or denying a permanent injunction in such suit.

APPENDIX B

Pertinent Provisions of the Ohio General Code (Baldwin 1940 ed. and 1942 Supp.)

Section 274:

Bureau of Inspection of Public Offices; Powers and Duties.—There shall be a bureau of inspection and supervision of public offices in the department of auditor of state which shall have power as hereinafter provided in sections two hundred seventy-five to two hundred eighty-nine, inclusive, to inspect and supervise the accounts and reports of all state offices, including every state educational, benevolent, penal and reformatory institution, public institution and the offices of each taxing district or public institution in the state of Ohio. Said bureau shall have the power to examine the accounts of every private institution, association, board or corporation receiving public money for its use and purpose, and may require of them annual reports in such form as it may prescribe. The expense of such examination shall be borne by the taxing district providing such public money. By virtue of his office the auditor of state shall be chief inspector and supervisor of public offices, and as such appoint not exceeding two deputy inspectors and supervisors, and a clerk. No more than one deputy inspector and supervisor shall belong to the same political party.

Section 287:

EXPENSES OF BUREAU; HOW BORNE; DUTIES OF AUDITOR OF STATE.—The necessary expenses of the maintenance and operation of the bureau of inspection and supervision and the total amount of compensation paid state examiners and assistant state examiners in excess of the amount borne by the taxing districts shall be borne by the several counties in proportion to their population at the preceding federal census; provided that the total amount of all such expenses shall not exceed in the aggregate the sum of one hundred and twenty thousand dollars per annum. The auditor of state shall draw on the treasurer of each county for its proportion of such expenses and the county treasurer shall pay such amount from the general revenue fund of the county semi-annually during the months of June and December. All moneys received by the auditor of state for the maintenance and operation of the bureau, shall be paid into the state treasury to the credit of the bureau of inspection and supervision fund, and all moneys received by the auditor of state for the compensation of state examiners and assistant state examiners shall be paid into the state treasury to the credit of the public audit expense fund.

Section 1465–66:

ANNUAL PAYMENT BY COUNTY TO CREDIT OF FUND; PUBLIC INSTITUTIONS TO MAKE REPORT TO COMMISSION.—Each county auditor, immediately following receipt of the certificate mentioned in section 1465–65 shall issue his warrant in favor of the treasurer

of state of Ohio on the county treasurer of his county, for the aggregate amount due from such county, for such county and the taxing districts therein, to the public insurance fund, and the county treasurer shall pay the amount called for by such warrant from the county treasury, and the county auditor shall charge the amount so paid to the county itself and the several taxing districts therein as shown by such certificate; and the treasurer of state shall immediately upon receiving such money, convert the same into the public insurance fund.

In the case of a district activity or institution mentioned in section 1465-63 the chief fiscal officer of such institution or activity shall transmit the reports to the industrial commission at the time and in the manner provided in section 1465-65, and shall upon receipt of the certificate of the amount due from such institution forthwith transmit to the treasurer of state the amount shown by such certificate.

Section 2670:

FINDING AND DECREE; APPRAISAL OF PROPERTY; DISTRIBUTION OF PROCEEDS.—A finding shall be entered of the amount of such assessments, or any part thereof, as are found due and unpaid, and for penalty and costs, for the payment of which the court shall order such premises to be sold without appraisement for not less than the total amount of such finding and costs, unless the county treasurer shall apply for an appraisal, in which event the premises shall be appraised in the manner provided by section 11672 of

the General Code, and shall be sold for at least two-thirds of the appraised value thereof. From the proceeds of the sale the costs shall be first paid, next the finding of the amount of assessments, and the balance shall be distributed according to law. No statute of limitations shall apply to such action. When the land or lots stand charged on the tax duplicate as forfeited to the state, it shall not be necessary to make the state a party, but it shall be deemed a party through and represented by the county treasurer.

Section 2688:

PAYMENT MADE BY COUNTY TREASURER TO STATE TREASURER, WHEN.—After he has made each settlement with the county auditor, the county treasurer shall pay into the state treasury, on the warrant of the state auditor, the full amount of all sums found by the auditor of state, on an examination of the duplicate settlement sheets sent to him by the county auditor, to belong to the state.

Section 5328:

PROPERTY TO BE ENTERED ON GENERAL TAX LIST AND DUPLICATE.—All real property in this state shall be subject to taxation, except only such as may be expressly exempted therefrom. * * * All property mentioned in this section shall be entered on the general tax list and duplicate of taxable property as prescribed in this title.

Section 5351:

STATE OR U. S. PROPERTY.—Real or personal property belonging exclusively to the state or United States, and public property used for a public purpose shall be exempt from taxation.

Section 5570–1:

COUNTY AUDITOR SHALL MAKE LIST OF EXEMPTED PROPERTY; CONTENTS OF LIST; CORRECTIONS; CONSENT OF BOARD OF TAX APPEALS; REVISIONS.—It shall be the duty of the county auditor to make a list of all the property, both real and personal, in his county, and including moneys, credits and investments in bonds, stocks, or otherwise, which is exempted from taxation under sections 3410–6, 4759, 5349, 5350, 5351, ~~5352, 5353,~~ 5353–1, 5356, 5357, 5359, 5361, 5362, 5363, 7915–1, 10093, 10101, 10105 and 10192 of the General Code. In each case in addition to the name of the owner, such list shall show the value of the property exempted and a statement in brief form of the reason for or ground on which such exemption has been granted. It shall be corrected annually by adding thereto such items of property as may have been exempted during the year and by striking therefrom such items as shall have lost their right of exemption and which shall be reentered on the taxable list. After this act takes effect no additions shall be made to such exempt lists nor additional items of property exempted under any of the sections enumerated herein without the consent of the board of tax appeals, but when any personal property or endowment fund of an institution has once been held by the board of tax

appeals to be properly exempt from taxation, it shall not be necessary to obtain the board's consent to the exemption of additional property or investments of the same kind belonging to the same institution; but such property shall appear on the abstract filed annually with the board. The board of tax appeals shall, prior to January 1, 1942, revise the list in every county so that no property is improperly or illegally exempted from taxation; and shall have power to make further revisions at any time thereafter. The county auditor shall follow the orders of the board of tax appeals given under this section. An abstract of such list shall be filed annually with such board on a form to be approved by it, and a copy thereof shall be kept on file in the office of each county auditor for public inspection. *The board of tax appeals shall not consider an application for exemption of property under any of the sections enumerated herein unless the application has attached thereto a certificate or affidavit executed by the county treasurer certifying that taxes, assessments, penalties and interest levied and assessed against the property sought to be exempted have been paid in full to the date upon which the application for exemption is filed.*

Provided, however, that taxes, penalties and interest which have accrued after the property began its use for the exempt purpose but in no case prior to the date of acquisition of the title to said property by applicant, may be remitted by the county auditor, with the consent of the board of tax appeals.[1]

[1] The above italics have been supplied and denote an amendment to this section under an act effective August 21, 1941.

Section 5579:

TAX COMMISSION SHALL DIRECT AND SUPERVISE ASSESSMENT OF REAL PROPERTY; ASSESSING OFFICERS; COUNTY BOARD OF REVISION.—In addition to all other powers and duties vested in or imposed upon it by law, the tax commission of Ohio shall direct and supervise the assessment for taxation of all real property in the state. County auditors shall, under the direction and supervision of the tax commission of Ohio, be the chief assessing officers of their respective counties, and, shall list and value real property for taxation, within and for their respective counties, except as may be otherwise provided by law. There shall also be in each county, a board to hear complaints and revise assessments of real property for taxation, which shall be known as the county board of revision.

Section 5625-3:

AUTHORIZED TO LEVY TAXES.—The taxing authority of each subdivision is hereby authorized to levy taxes annually, subject to the limitations and restrictions of this act, on the real and personal property within the subdivision for the purpose of paying the current operating expenses of the subdivision and the acquisition or construction of permanent improvements. The taxing authority of each subdivision and taxing unit shall, subject to the limitations and restrictions of this act, levy such taxes annually as are necessary to pay the interest and sinking fund on and retire at maturity the bonds, notes and certificates of indebtedness of such subdivision and taxing unit including levies in anticipation of which the subdivision or taxing unit has incurred

indebtedness All taxes levied on property shall be extended on the tax duplicate by the county auditor of the county in which the property is located, and shall be collected by the county treasurer of such county in the same manner and under the same laws, rules and regulations as are prescribed for the assessment and collection of county taxes. The proceeds of any tax levied by or for any subdivision when received by the fiscal officer thereof shall be deposited in its treasury to the credit of the appropriate fund.

Section 5713:

STATE SHALL HAVE FIRST LIEN; FORECLOSURE PROCEEDINGS, WHEN INSTITUTED; COSTS; PARTIAL PAYMENT OF DELINQUENT TAXES PERMITTED.—The state shall have a first and best lien on the lands and lots described in the delinquent land list, for the amount of taxes, assessments and penalty and accrued interest charged prior to the delivery of such list, together with interest on the principal sum of such taxes and assessments at the rate of eight per cent per annum, from the date of the August settlement next preceding the delivery of such list to the date of redemption thereof, and the additional charge of twenty-five cents for the making of said list. If the taxes have not been paid for three consecutive years after certification, the state shall have the right to institute foreclosure proceedings thereon, in the manner provided by this chapter, and there shall be taxed by the court as costs in the foreclosure proceedings instituted on said certification,

the cost of an abstract or certificate of title to the property described in said certification, if the same be required by the court, to be paid into the general fund of the county. Nothing in this chapter shall be so construed as to forbid or prevent the partial payment of such delinquent taxes, assessments and penalty, during said period of three years, but such partial payments may be made and received as provided by law without prejudice to the right of the state to institute foreclosure proceedings at the end of said period for any amount then remaining unpaid.

Section 5714:

ENTRY "DELINQUENT" DEEMED NOTICE TO PURCHASERS.—The county auditor shall enter upon the county auditor's tax list and treasurer's duplicate, showing such lands delinquent, the word "delinquent," and such entry on said tax list and duplicate shall be deemed and taken to be notice to all purchasers or other persons acquiring any right, title or interest in or to the land pertinent to which such entry is made, of the prior right and lien of the state under the provisions of this chapter.

Section 5718-3:

PROCEEDINGS TO FORECLOSE LIEN OF STATE, HOW INSTITUTED AND PROSECUTED; FORFEITURE AND SALE OF LANDS; PETITION; DECREE.—It shall be the duty of the prosecuting attorney of the county, except as hereinafter provided, upon the delivery to him by the county auditor of a delinquent land tax certificate, to institute a proceeding thereon in the name of the county treasurer to foreclose the lien of the state, in any court of competent

jurisdiction within nine months thereafter unless the taxes, assessments, penalty, interest and charges are sooner paid, and to prosecute the same to final judgment and satisfaction. * * *

Section 5719:

FINDING; APPRAISEMENT AND SALE; DISTRIBUTION OF PROCEEDS; RIGHT OF DOWER BARRED.—A finding shall be entered of the amount of such taxes and assessments, or any part thereof, as are found due and unpaid, and of penalty, interest, costs and charges, for the payment of which, together with all taxes and assessments payable subsequent to certification for foreclosure, the court shall order such premises to be sold without appraisement for not less than the total amount of such finding and costs, unless the prosecuting attorney shall apply for an appraisal, in which event the premises shall be appraised in the manner provided by section 11672 of the General Code, and shall be sold for at least two-thirds of the appraised value thereof. * * * From the proceeds of the sale the cost shall be first paid, next the amount found due for taxes, assessments, penalties, interest and charges, next the amount of any taxes and assessments accruing after the entry of the finding and before sale, all of which taxes, assessments, penalties, interest and charges shall be deemed satisfied, though the amount applicable thereto be deficient, and the balance, if any, shall be distributed according to law. Upon confirmation of the sale a husband or wife of the party charged with the delinquent tax shall thereby be barred of the right of dower in the property sold, though such husband or wife was not a

party to the action. No statute of limitations shall apply to such action. When the land or lots stand charged on the tax duplicate as certified delinquent, it shall not be necessary to make the state a party, but it shall be deemed a party through, and represented by the county treasurer.

Section 5744:

LANDS NOT SOLD FORFEITED TO STATE.—Every tract of land and town lot offered for sale in foreclosure proceedings, as provided in the next preceding chapter, and not sold for want of bidders, and every tract of land and town lot omitted from foreclosure proceedings and duly advertised as provided in this chapter shall be forfeited to the state. Thenceforth all the right, title, claim, and interest of the former owner or owners thereof, shall be considered as transferred to, and vested in, the state, to be disposed of as the General Assembly may direct.

Section 5747:

TREASURER CHARGED WITH MONEYS RECEIVED ON FORFEITED LANDS; REPORT THEREON TO AUDITOR OF STATE.—The county auditor shall charge the county treasurer with all moneys by him received under the provisions of the next preceding section and make out an annual list of lands and town lots, upon which payments have been so made, specifying therein the proportion of such money belonging to the state. He shall forward the list to the auditor of state, by the county treasurer, at the time of paying over the state tax, and the county treasurer shall pay into the state treasury the states' proportion of such money, at the time he pays the other taxes due the state.

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